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Ameritech Comments
AAD/USB 98-37
March 4, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	AAD/USB File No. 98-37
Iowa Communications Network)	
Petition for Declaratory Ruling)	

COMMENTS OF AMERITECH

Ameritech¹ submits these comments in opposition to the petition of Iowa Telecommunications and Technology Commission ("ITTC") for declaratory ruling that its Iowa Communications Network ("ICN") is eligible to receive universal service payments under §254 of the Communications Act of 1934, as amended, as a provider of telecommunications services to schools, libraries, and rural health care institutions. ICN does not qualify for such payments because it is not a common carrier offering -- as required by the Commission.

It appears that ICN's services are available only to "educational institutions in the state [of Iowa], including schools, colleges and universities, private or public . . . and to health care institutions across the state . . ."² Since ICN does not offer its services to the public at large, it is not a common carrier.

¹ Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

² Petition at 3-4.

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ICN claims that it need not offer “the entire range of common carrier services” to qualify as a common carrier. That is true. As the United States Court of Appeals for the District of Columbia Circuit noted in the *NARUC I*³ case:

One maybe a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use only to a fraction of the total population.⁴

However, the *NARUC I* case made it clear that, whatever services are offered by the carrier, they must be offered to the public at large -- not merely a select group of the public.

What appears to be the essential quasi-public character implicit in the common carrier concept is that the carrier “undertakes to carry for all people indifferently. . .” [Citations omitted.]⁵

It is not merely enough that ITTC “holds itself out indifferently to its potential customers.” [Emphasis added.]⁶ If ITTC would refuse to provide its services to any member of the public that requested it simply because the requesting party was not one of “its potential customers,” then ITTC is not a common carrier. As the *NARUC I* court noted:

But a carrier will not be a common carrier where its practice is to make individualized decisions in particular cases, whether and on what terms to deal. . . Moreover the characteristic of holding oneself out to serve indiscriminately appears to be an essential element, if one is to draw a coherent line between common and private carrier. . . The common law

³ *NARUC v FCC*, 525F.2d 630(DC Cir. 1976).

⁴ *Id.* at 641.

⁵ *Id.*

⁶ Petition at 2.

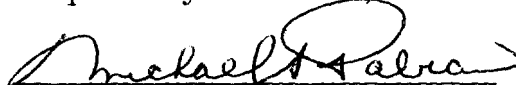
requirement of holding oneself out to serve the public indiscriminately draws such a logical and sensible line between the two types of carriers.⁷

Thus, ICN is not a common carrier because it will not provide its service to any member of the requesting public -- not because the service is not of the type the requesting party desires, but rather because the requesting party is not within the limited group that ICN is intended to serve.

Thus, while ICN might be considered a private carrier, it does not qualify as a common carrier and, as such, is therefore, not entitled to receive direct reimbursement from the support mechanisms of the universal service fund.⁸

In light of the foregoing, the petition should be denied.

Respectfully submitted,



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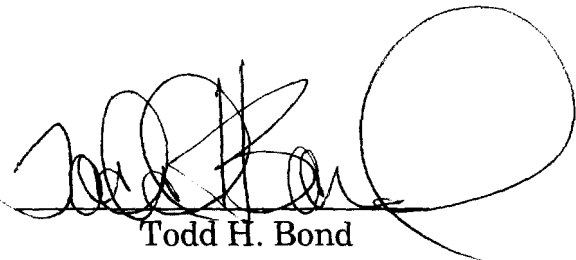
⁷ *Id.* at 641-642.

⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, FCC 97-420 (released December 30, 1997) at ¶¶187-189.

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Comments of Ameritech has been served on the party listed below, via first class mail, postage prepaid on this 4th day of March, 1998.

By:

A handwritten signature in black ink, appearing to be "Todd H. Bond", written over a horizontal line. The signature is stylized with loops and a large circular flourish on the right side.

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